

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case Nos.: <b>12-O-18029-DFM</b>
	)	(12-O-18033)
<b>JOHN K. KIM,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 183020,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
A Member of the State Bar.	)	

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Respondent **John K. Kim** (Respondent) was charged with eight counts of misconduct stemming from two client matters. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) then filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that, if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC) and the attorney fails to have the default set aside or vacated within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> If the court determines that any due process requirement is not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment, vacate the default, and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(F)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that Respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on June 11, 1996, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On May 30, 2014, the State Bar filed and properly served the NDC on Respondent by certified mail, return receipt requested, to his membership records address. The NDC notified Respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The State Bar never received an executed return receipt for the NDC.

Thereafter, on June 12, 2014, the assigned State Bar Deputy Trial Counsel (DTC) sent courtesy copies of the NDC to Respondent by regular first class mail to both his membership records address and a home address that the Bar had for Respondent in the case file. On June 12, 2014, the DTC also sent an email to Respondent at an email address that Respondent had previously used in communicating with the Bar. In that email, which had a copy of the NDC attached to it, the DTC asked Respondent to file a response to the NDC and warned Respondent that the State Bar would seek his default if he did not do so.

On July 3, 2014, the DTC (1) left a voicemail message for Respondent on Respondent's cell phone, asking Respondent to return his call; (2) spoke on the telephone with Respondent's wife, who stated that Respondent was not available at the time, but agreed to ask Respondent to telephone the DTC; (3) telephoned Respondent at a nonpublic telephone number that Respondent

maintained with the State Bar's membership records office; and (4) telephoned Respondent at an additional telephone number that Respondent had previously given to the DTC.

On July 7, 2014, the DTC (1) again telephoned Respondent at the additional telephone number that Respondent had previously given him; and (2) sent another courtesy copy of the NDC to Respondent by regular first class mail to a possible additional address that the DTC located for Respondent during an internet search. Except for the courtesy copy of the NDC that was sent to Respondent's membership records address on June 12, 2014, none of the courtesy copies of the NDC that were sent to Respondent was returned to the State Bar undelivered.

Respondent failed to file a response to the NDC. On July 10, 2014, the State Bar filed and properly served a motion for entry of default on Respondent by certified mail, return receipt requested, to Respondent's membership records address. The motion complied with the requirements for a default, including a supporting declaration establishing that the DTC acted with reasonable diligence to notify Respondent of this proceeding. (Rule 5.80.) The motion also notified Respondent that, if he did not timely move to set aside his default, the court would recommend his disbarment.

Respondent did not file a response to the motion for entry of default or the NDC, and his default was properly entered on July 31, 2014. The order entering default was properly served on Respondent at his membership records address by certified mail, return receipt requested. The court also ordered Respondent's involuntary enrollment as an inactive member of the State Bar of California under Business and Professions Code section 6007, subdivision (e),<sup>3</sup> effective three days after service of the order. He has remained inactively enrolled under the court's July 31, 2014, order since that time.

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<sup>3</sup> Unless otherwise indicated, all references to sections are to the Business and Professions Code.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 90 days to file motion to set aside default].) On November 21, 2014, the State Bar filed and properly served a petition for disbarment on Respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) Respondent had not contacted the State Bar after his default was entered on July 31, 2014; (2) there is no other disciplinary investigation pending against Respondent; (3) Respondent has two prior records of discipline; and (4) the Client Security Fund has not made any payments resulting from Respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default.

The case was submitted for decision on January 21, 2015.

Respondent has two prior records of discipline.<sup>4</sup> In Respondent's first prior record, Respondent was publicly reprovved in September 2002 with conditions attached for one year. Respondent participated in that proceeding and stipulated to culpability on the following four counts of misconduct in a single client matter: failing to perform legal services; violating a court order issued in the course of Respondent's profession; improperly withdrawing from employment; and failing to communicate. (See Order Approving Stipulation filed September 16, 2002, in State Bar Court case number 01-O-03040.)

In Respondent's second prior record, Respondent was again publicly reprovved with conditions attached for one year. Respondent also participated in that proceeding and stipulated to culpability on four counts of misconduct in two client matters. In the first client matter, Respondent stipulated to engaging in the unauthorized practice of law. And, in the second client matter, Respondent stipulated to failing to perform legal services, failing to release the client file as requested by the client, and failing to cooperate with the State Bar's investigation of the

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<sup>4</sup> The court admits into evidence the certified copies of Respondent's two prior records of discipline that are attached to the November 21, 2014, petition for disbarment.

client's complaints. The order approving the stipulation and issuing the public reproof was filed on June 12, 2003, in State Bar Court case numbers 02-O-10574 and 02-O-14099.

Finally, the court takes judicial notice that, on April 30, 2013, while the State Bar was still investigating the misconduct charged in the present proceeding, Respondent filed a resignation with disciplinary charges pending. The Supreme Court, however, declined to accept Respondent's resignation in an order filed on February 19, 2014, in *In re John K. Kim on Resignation*, case number S214067 (State Bar Court case number 13-Q-12149).<sup>5</sup>

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of a respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82(2).) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that Respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(F)(1)(d).)

### **Case Number 12-O-18029 (Saysomphane Matter)**

Count One - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failing to perform legal services with competence) when, while he was representing a defendant in an employment lawsuit, failed to respond to discovery requests; failed to file a response to a motion for an order establishing admission and imposing sanctions; failed to appear at the hearing on that motion; and failed to appear at trial.

Count Two - Respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (client abandonment) when he effectively terminated his employment by ceasing to

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<sup>5</sup> In accordance with California Rules of Court, rule 9.21(a), Respondent was transferred to inactive membership in the State Bar of California on April 30, 2013, when he filed his resignation. After the Supreme Court declined to accept Respondent's resignation, Respondent never sought to be restored to active status. Thus, Respondent has continuously been an inactive member of the State Bar of California since April 30, 2013.

perform any action on behalf of the client after filing an answer for the client in an employment lawsuit and by failing to inform the client that he was withdrawing from employment.<sup>6</sup> Because Respondent abandoned the client after only filing an answer for her, the court finds the entire \$40,000 in advanced fees that Respondent collected from the client to be unearned and, therefore, recommends that Respondent be required to refund the entire \$40,000 to the client with interest. (*In the Matter of Phillips* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 315, 324 [“To justify retention of legal fees, respondent was required to perform more than minimal preliminary services of no value to the client. (Citation.)”].)

Count Three - Respondent willfully violated section 6068, subdivision (m) (failing to communicate) by failing to inform the client that he had been served with discovery requests in February 2011; that a motion for an order establishing admission and imposing sanctions had been filed and served on Respondent in April 2011; that the court filed an order establishing admissions and imposing \$1,790 in sanctions on Respondent and the client jointly and severally in June 2011; that Respondent failed to appear at the trial in September 2011; and that the court entered two judgments against the client in September 2011.

Count Four - Respondent willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to refund unearned fees) by failing to refund the unearned portion of the \$40,000 advanced fee he collected from his client.

Count Five - Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct (render appropriate accountings of client funds) by failing to render an appropriate accounting for the \$40,000 in advanced fees following the termination of his employment in February 2011.

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<sup>6</sup> The court notes that Count Two is duplicative of Counts One, Three, and Four. That fact, however, does not affect the level of discipline recommended here.

Count Six - Respondent willfully violated section 6103 (violation of court order) by failing to pay \$1,790 in court-ordered sanctions.

**Case Number 12-O-18033 (Lee Matter)**

Count Seven - Respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct when he represented a defendant in a breach of contract lawsuit by failing to file an answer for the client; failing to file a stipulation to set aside the client's default; and advising the client that she did not need to appear at a debtor's examination.

Count Eight - Respondent willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct by failing to render an appropriate accounting for the \$3,750 in advanced fees Respondent collected from his client to defend the breach of contract lawsuit.

**Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(F) have been satisfied, and Respondent's disbarment is recommended. In particular:

- (1) the NDC was properly served on Respondent under rule 5.25;
- (2) ) the State Bar exercised reasonable diligence to notify Respondent of this proceeding prior to the entry of his default;
- (3) the default was properly entered under rule 5.80; and
- (4) the factual allegations in the NDC, deemed admitted by the entry of the default, support a finding that Respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, Respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that Respondent **John K. Kim**, State Bar number 183020, be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **Restitution**

The court also recommends that Respondent be ordered to make restitution to Shelly Saysomphane in the amount of \$40,000 plus 10 percent interest per year from February 9, 2011. Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

### **California Rules of Court, Rule 9.20**

The court also recommends that Respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20 and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that **John K. Kim**, State Bar number 183020, be involuntarily enrolled as an

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inactive member of the State Bar of California, effective three calendar days after the service of this decision and order by mail. (Rule 5.111(D).)

Dated: April 1, 2015.

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**DONALD F. MILES**  
Judge of the State Bar Court